

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.424 of 2006

Mrs. Shamim Barlas
Vs.
Al-Habib Cooperative Housing Society & another

1. For hearing of CMA No. 13832 of 2020

Plaintiff : Through Mr. Saathi M. Ishaq, Advocate.

Defendant No.1 : Through Mr. Nadir Khan Burdi, Advocate.

Dates of hearing : 28 August 2023, 19 September 2023, 6 October 2023, 11 October 2023, 22 February 2024, 24 February 2024, 9 March 2024, 16 March 2024

Date of Order : 2 November 2024

Suit No.1491 of 2015

Altaf Hussain
Vs.
Mst. Badrunnisa & another

AND

Suit No. -1133 of 2021

Fayyaz Hussain & Others
Vs.
Allahabad Cooperative Housing Society Limited & Others

In Suit No.1491 of 2015

1. For Further Orders in view of Courts Order dated 5 May 2023 as Commissioner Report has not been Received

In Suit No. -1133 of 2021

1. For Orders on Office Objection
2. For Further Orders
3. For Orders on CMA NO. 14255 of 2023
4. For Hearing of CMA No. 8047 of 2021

Plaintiff in Suit No.1491 of 2015 : Through Mr. Mujtaba Sohail Raja,
Advocate.

Plaintiff in Suit No.-1133 of 2021 : Through Mr. Muhammad Basim Raza,
Advocate.

Dates of hearing : 19 September 2023, 6 October 2023, 11
October 2023, 24 February 2024, 9 March
2024 and 16 March 2024,

Date of Order : 2 November 2024

Suit No.197 of 2022

M/s. Banglore Cooperative Housing Society Limited
Vs.
Qaiser Ahmed & another

AND

Suit No. 604 of 2022

Qaiser Ahmed
Vs.
M/s Banglore Cooperative Housing Society Limited & another

In Suit No.197 of 2022

1. For Order on Maintainability in terms of Order dated 26 September 2023 passed in Suit No. 604 of 2022

In Suit No. 604 of 2022

1. For Orders on CMA NO. 6415 of 2022
2. For Hearing of CMA No. 6417 of 2022
3. For Order on Maintainability in terms of Order dated 26 September 2023 passed in Suit No. 604 of 2022

Plaintiff in Suit No. 197 of 2022 : Through Mr Khalil Siddiqui, Advocate and
Mr. Zulfiaqar Ali, Advocate.

Plaintiff in Suit No. 604 of 2022
and Defendant No. 1 in
Suit No. 604 of 2022 : Through Mr. Chaudary Atif Rafiq and Mr.
Muhammad Basim Raza, Advocate.

On Court Notice : Ms. Alizeh Bashir, Advocate.

Dates of hearing : 26 September 2023, 11 October 2023, 24
February 2024, 6 March 2024, 9 March 2024,
16 March 200

Date of Order : 2 November 2024

ORDER

MOHAMMAD ABDUR RAHMAN, J. By this common order I will be deciding a preliminary issue that was settled in each of these Suits to consider as to whether or not each of these suits are to be transferred to the “Special Court for Cooperative Societies” constituted under Section 117 of the Sindh Cooperative Societies Act, 2020 (hereinafter referred to as the “Act, 2020”) read with two notifications issued by the Government of Sindh as hereinunder:

“ ...

Karachi, dated the 03 August. 2021.

NOTIFICATION

No.S.JUDL:4-1/2021:- Pursuant to the concurrence of the Hon'ble Chief Justice, High Court of Sindh and with the approval of Government of Sindh, the following Courts of Senior Civil Judges/ Assistant Sessions Judges are hereby specified to be "Special Courts for Cooperative Societies" to try the offences under the Sindh Cooperative Societies Act, 2020, with immediate effect:-

| Sr # | Division | Court Specified |
|------|------------------------------|---|
| 1. | Karachi Division | 5 th Senior Civil Judge/ ASJ. Karachi West |
| 2. | Hyderabad Division | 5 th Senior Civil Judge/ ASJ. Hyderabad |
| 3. | Sukkur Division | 2 nd Senior Civil Judge/ ASJ. Sukkur |
| 4. | Mirpurkhas Division | 3 rd Senior Civil Judge/ ASJ. Mirpurkhas |
| 5. | Shaheed Benazirabad Division | 1 st Senior Civil Judge/ ASJ. Shaheed Benazirabad |
| 6. | Larkana Division | 4 th Senior Civil Judge/ ASJ. Larkana |

ALI AHMED BALOCH
LAW SECRETARY ...

Karachi dated the 9th August, 2021

NOTIFICATION

No.S.JUDL:4-1/2021: In continuation and partial modification of this department's Notification No.S.JUDL:4-1/2021/109 dated 03.08.2021 the specified courts under the said Notification for conducting trial of offences under the Sindh Cooperative Societies Act 2020, shall also try civil disputes as mandated under the said Act and the rules made thereunder.

ALI AHMED BALOCH
LAW SECRETARY”

A. The Suits

2. The proceedings in each of the Suits are summarised as hereinunder:

(i) Suit No.424 of 2006

3. This Suit has been maintained by the Plaintiff claiming an allotment to Plot No.B-22, Sector 8A/1, Al-Habib Cooperative Housing Society Limited, admeasuring 400 square yards. The Plaintiff contends that despite this property being allotted to him, the Defendant No.2 was not put into possession of it by the Al-Habib Cooperative Housing Society Limited and in consequence of which a statutory arbitration was held and which was adjudicated in favour of the Plaintiff. He contends that thereafter Execution No.33 of 2003 was filed in the Court of Senior Civil Judge, Malir and on which execution an order was passed that possession of property was to be handed over to the Plaintiff. It is contended that despite such an order, possession was not handed over to the Plaintiff and on account of the loss suffered thereon, the Plaintiff seeks damages in the following terms:

- “ ... a. *Suit may be decreed for Rs.100 Millions severally and jointly against the Defendants with 14% markup from the date of denial of possession of Plot.*
- b. *Cost of the suit may please be awarded.*
- c. *Any other relief may deem fit.”*

The Defendant No. 1 has maintained CMA No. 13832 of 2020 being an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 contending that the Plaintiff is liable to be dismissed as compliance of Section 70 of the Cooperative Societies Act, 1925 was not made before the institution of this Suit and also that as the matter was adjudicated in Arbitration proceedings under Section 54 of the the Cooperative Societies Act, 1925 that this Suit is barred under Section 11 of the Code of Civil Procedure, 1908.

(ii) Suit No.1491 of 2015 and Suit No. -1133 of 2021:

4. Suit No. 1491 of 2015 has been filed in respect of Plot No. A-57, Allahabad Cooperative Housing Society Limited, Block-13, KDA Scheme No.24, Gulshan-e-Iqbal, Karachi, admeasuring 200 square yards located in Allahabad Cooperative Housing Society Limited. The Plaintiff in this Suit claims to be the owner of this property and is in a dispute over it's ownership with the private Defendant No.1 and maintains the following prayer:

" ... DECLARE:

That the Plaintiff is the owner of "Residential Plot" bearing No. A-57 (Category "A"), admeasuring Two Hundred (200) square Yards, or thereabouts, situated in Allahabad Cooperative Housing Society Limited, located in Block No.13 of KDA Scheme No.24, Gulshan-e-Iqbal, Karachi, with construction thereon;

ii. (In furtherance of "i") Declare that the Defendant No. 1 has no rights(s) interest(s), and/or entitlement(s) as against "Residential Plot" bearing No.A-57 (Category "A"), admeasuring Two Hundred (200) Square Yards, or thereabouts situated in Allahabad Cooperative Housing Society Limited, located in Block No 13 of KDA Scheme No. 24, Gulshan-e-Iqbal, Karachi;

Declare that the "Sale Agreement" dated 17.02.1991 and "Sale Deed" dated 17.02.1991 executed, and registered, in favor of the Defendant No.1 are forged, fabricated. Consequently, this Hon'ble Court may be pleased to cancel the "Sale Agreement" dated 17.02.1991 and "Sale Deed" dated 17.02.1991 executed, and registered, in favor of the Defendant No.1, and deliver up the same;

GRANT:

iv. (Pending the present proceedings and the trial) A Permanent Injunction restraining the Defendants, and / or any other person(s) acting under them, through them, and / or on their behalf, from creating any third party interest(s) on "Residential Plot" bearing No. A-57 (Category "A"), admeasuring Two Hundred (200) Square Yards, or thereabouts, situated in Allahabad Cooperative Housing Society Limited, located in Block No. 13 of KDA Scheme No. 24, Gulshan- e-Iqbal, Karachi, with construction thereon;

V. (In furtherance of "iv") A Permanent Injunction restraining the Defendants, and/or any other person(s) acting under them, through them, and / or on their behalf, from dispossessing the Plaintiff from "Residential Plot" bearing No. A-57 (Category "A"), admeasuring Two Hundred (200) Square Yards, or thereabouts, situated in Allahabad Cooperative Housing Society Limited, located in Block No. 13 of KDA Scheme No. 24, Gulshan-e-Iqbal, Karachi, with construction thereon"

5. The Plaintiffs in Suit No.-1133 of 2021 claim a 1/3rd undivided share in Plot No.A-57 Allahabad Cooperative Housing Society Limited, Block-13, KDA Scheme No.24, Gulshan-e-Iqbal, Karachi, admeasuring 200 square yards. The Plaintiffs in this suit claim to have purchased the 1/3rd undivided share in that property from the Plaintiff in Suit No. 1491 of 2015 through a registered Conveyance Deed. They also maintain a claim as against Defendant No.4 and seek following relief:

" ... i. *Declare that the Plaintiffs No.1, 2 and 3(i) to (v) are respectively the owners of 1/3rd of "Residential Plot" bearing No.A-57 (Category "A") admeasuring two hundred (200) square yards, or thereabouts, situated in Allahabad Cooperative Housing Society in Block No. 13 of KDA Scheme No. 24, Gulshan-e-Iqbal, Karachi and the ground plus two floors structure constructed thereon;*

ii. Declare that the Defendants No. 3 and 4 have no rights, interest, and/or entitlement as against "Residential Plot" bearing No.A-57 (Category "A"), admeasuring two hundred (200) square yards, or thereabouts, situated in Allahabad Cooperative Housing Society Limited, located in Block No.13 of KDA Scheme No. 24, Gulshan- e-Iqbal, Karachi;

iii. Declare that the Sale Agreement dated 17.2.1991 and Sale Deed dated 17.2.1991 executed, and registered, in favour of the Defendant No.4 is forged and fabricated;

CONSEQUENTLY

iv. *Cancel the Sale Agreement dated 17.2.1991 and Sale Deed dated 17.2.1991 executed, and registered, in favour of the Defendant No. 4, and deliver up the same;*

v. *A Permanent Injunction restraining the Defendants, and/or any persons acting under them, through them, and/or on their behalf, from creating any third party interest(s) on "Residential Plot" bearing No. A-57 (Category "A"), admeasuring two hundred (200) square yards, or thereabouts, situated in Allahabad Cooperative Housing Society Limited, located in Block No.13 of KDA Scheme No. 24, Gulshan-e-Iqbal, Karachi and the ground plus two floors structure constructed thereon;*

vi. *A Permanent Injunction restraining the Defendants, and/or any persons acting under them, through them, and/or on their behalf, from dispossessing the Plaintiffs from "Residential Plot" bearing No A-57 Category "A"), assuring two hundred (200) square yards, or thereabouts, situated in Allahabad Cooperative Housing Society Limited, located in Block No. 13 of KDA Scheme No. 24, Gulshan-e-Iqbal, Karachi and the ground plus two floors structure constructed thereon;*

vii. *Grant any other relief(s) may be deemed necessary, appropriate, and/or essential in the given circumstances of the case, and Cost of the proceedings."*

(iii) Suit No.197 of 2022 and Suit No.604 of 2022

6. Suit No. 197 of 2022 has been instituted by the Bangalore Cooperative Housing Society Limited as against the Defendant No.1 in respect of Plot No.26, Blocks No. 7 and 8, Bangalore Cooperative Housing Society Limited, admeasuring 1000 square yards claiming that the property has remained undeveloped for 70 years and is therefore, pleading that as the Defendant No.1 had failed to construct on the said property, execute a 99 years lease or also pay non-utilization fee, it had on 4 September 2021 validly cancelled the title of the Defendant No. 1 to the property . The Plaintiff i.e. Bangalore Cooperative Housing Society Limited maintains the Suit seeking the following relief:

" ... *To declare that the Defendant No.1 has failed to utilize the Suit Plot i.e. Plot No.20 Bangalore Town, measuring 1000 Sq. Yds. situated in Bangalore Cooperative Housing Society Ltd, Karachi as per the terms of allotment and Sub-License No.2.*

(a) *To declare that the Plaintiff has rightly cancelled the suit Plot through its cancellation letter.*

(b) *Defendant be restrained from transferring the possession to any other party and to use other than residential purpose of the Suit Plot.*

(c) *Direct the Defendants to handover peaceful vacant possession of the suit Plot to the Plaintiff Society and if fail to handover, the Nazir may be appointed to take over the physical possession of the suit plot and hand over to the Plaintiff.*

(d) *To pass order to appoint the Nazir of this Honourable Court as Commissioner to inspect the site and submit report as to the present position of the Suit Property.*

(e) *Grant any other relief or relief(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.*

(f) *Grant the costs of this suit."*

7. Suit No. 604 of 2022 has been maintained by the Plaintiff as against the Bangalore Cooperative Housing Society Limited impugning the cancellation of the allotment made to the Plaintiff for Plot No.26, Blocks No. 7 and 8, Bangalore Cooperative Housing Society Limited, admeasuring 1000 square yards. The Plaintiff in this suit contends that the decision of the Society to cancel the allotment is illegal and seeks the following reliefs:

- “ ...
- (i) *Cancel the Cancellation letter dated 22.01.2022 issued by the Society whereby the transfer of the Suit Property in the name of the Plaintiff was cancelled;*
 - (ii) *Declare that the Defendant No.1 has no authority to charge or claim any non-utilization fee from the Plaintiff and therefore any such claim is unlawful, illegal and in violation of the Plaintiff's fundamental rights*
 - (iii) *Declare that the non-utilization fee being charged at the rate of Rs.2000 per sq yards is unreasonable, disproportionate, unlawful, exorbitant and discriminatory and therefore liable to be struck down.*
 - (iv) *Permanently restrain the Defendants, their representatives, employees or assigns from allotting or transferring or creating any third party interest in the suit property and further from dispossessing the Plaintiff from the suit property.*
 - (v) *In the meantime, Direct the Defendant to issue NOC to be submitted to SBCA for the construction of the Plaintiff's house upon the suit property;*
 - (vi) *Costs of the suit;*
 - (vii) *Any other additional/alternate relief as this court may deem fit and appropriate”*

B. Arguments regarding Jurisdiction of this Court

8. Mr. Muhammad Basim Raza advanced arguments. He contended that the High Court of Sindh at Karachi possessed the subject, pecuniary and territorial jurisdiction to adjudicate the captioned Suits and that neither the jurisdiction conferred on the "Cooperative Courts" referred to in Section 73 of the Act, 2020 nor the "Special Courts for Cooperative Societies" created under Section 117 of the Act, 2020 ousted the jurisdiction of this Court to the extent of the causes of action of the captioned Suits.

9. He contended that under Section 9, of the Code of Civil Procedure, 1908, Civil Courts are permitted to entertain all kinds of civil disputes except where the Courts jurisdiction is ousted either expressly or by "implied necessity". He contended that the causes of action of each of the captioned suits and the prayers sought thereunder relate to the Plaintiffs rights to property and as such are suits of a civil nature envisaged under Section 9, of the Code of Civil Procedure, 1908.

10. Regarding sections that might possibly expressly oust the jurisdiction of this Court under Section 9 of the Code of Civil Procedure, 1908, he said that after examining the provisions of the Act, 2020 he was of the opinion that while Section

36, Section 70, Sub-Section (1) of Section 104 and Section 116 of the Act 2020 were in the nature of ouster clauses, however, as they did not envisage a complete ouster but rather a partial ouster of the jurisdiction of civil courts, the subject matter of a dispute that was not covered in each of those sections would therefore be within the jurisdictional competence of civil courts to adjudicate. He clarified that there was, however, no provision in the Act, 2020 which expressly ousted the entire jurisdiction of a Civil Court under the provisions of Section 9 of the Code of Civil Procedure, 1908.

11. He elaborated that as the Act, 2020 itself contained four ouster provisions this was by itself a sufficient indication of the legislative intent for only a partial ouster of a court exercising jurisdiction under Section 9 of the Code of Civil Procedure, 1908 and which were nevertheless contradicted by references in the Act, 2020 to such ouster only being in respect of the “business of a cooperative society” or orders and decrees which could be issued by a "Court or a Judge made for special cause" in Sub-Section (2) of Section 41 of the Act, 2020 or by a "Civil Court" in Sections 76 and 96 of the Act, 2020.

12. He contended that if this Court came to conclusion that the jurisdiction of the “Special Court for Cooperative Societies” extended to adjudicating “disputes” material to the Act, 2020, he maintained that the causes of action that are to be adjudicated in each of the Suits fell within the residual part of the ouster provisions of the Act, 2020 and hence each suit was maintainable before this Court.

13. He relied on a principle of interpretation of statutes wherein it has been considered that the provisions contained in a statute ousting the jurisdiction of court of general jurisdiction is to be construed very strictly and unless the case fell within the “letter and spirit” of the ousting provision, it would not be given effect to. Relying on this principle he contended that the extent of the scope of each of the “ouster” sections as contained in the Act, 2020 were summarised as hereunder:

- (i) Section 36 of the Act, 2022 only ousted the jurisdiction of a "Court of justice" insofar as the dispute pertained to the attachment of a member's share or interest in the capital of a society or provident fund;
- (ii) Section 70 of the Act, 2022 as it began with a saving clause expressed in the terms "save in so far as is expressly provided in this Act," presumed situations where a civil court could exercise jurisdiction over causes of action arising under the Act, 2020 and that to only ousting the jurisdiction of a "Civil Court" in matters

covered under Chapter X of the of the Act, 2022 or in respect of winding up or dissolution of a society;

- (iii) Sub-Section (1) of Section 104 of the Act, 2022 only ousted the jurisdiction of civil courts in respect of disputes under Section 78 of the Act, 2022 i.e. sale of property under distraint or liquidation of a society; and
- (iv) Section 116 of the Act, 2020 only ousted the jurisdiction of a court in respect of any matters that could have been disposed of or determined by the Government, Registrar, officer or liquidator, a society, a financing bank, a cooperative bank or any other officer or person of the Society empowered by or under the Act 2020 but as none of the aforementioned forums had been conferred jurisdiction under the Act, 2020 to adjudicate the causes of action of the captioned Suits or grant the prayers sought therein, Section 116 would also not oust the jurisdiction of this Court.

14. Regarding whether the requirement of a notice being issued under Section 115 of the Act, 2020 was mandatory or directory, Mr. Raza contended that the legislative intent and scope of the ouster provisions contained in Section 116 of the Act, 2020 should be considered in juxtaposition with the legislative intent and scope of Section 115 of the Act, 2020 in respect of the issuance of a notice in suits prior to its institution. Relying on the decision reported as **Super Builders vs. Gulshan-e-Faisal Cooperative Society**¹ he stated that the decision determined that the legislative intent and scope of Sections 70 and 70A of the Cooperative Societies Act, 1925 (hereinafter referred to as the “Act, 1925”), which sections are pari materia to Sections 115 and 116 of the Act, 2020, held that the object of the notice in suits was to provide an opportunity to the forums referred to in Sections 70 and 70A of the Act, 1925 and during the notice period, examine the claims and potentially settle disputes before the contesting parties go into litigation. The Court further held that as the Registrar of Societies under Section 54 of the repealed Act, 1925 were empowered to adjudicate some nature of civil disputes, as such, this Court had deemed a notice in suits a mandatory condition under the repealed Act 1925.

15. By contrast, Mr. Raza contended that the Registrar under the Act, 2020 was not entrusted with the same jurisdiction, as such, notice in a suit thereunder can at best be deemed a directory condition insofar as the captioned Suits are concerned, and consequently the non-compliance thereof would not affect the maintainability

¹ 2000 YLR 1385

or validity of the captioned Suits before this Court. Mr. Raza contended that this was a harmonious interpretation of Sections 115 and 116 of the Act, 2020 and which would not make the condition of notice in suits a redundancy inasmuch as notice in suits relating to issues, where a forum under Section 116 of the Act, 2020 was conferred with the power to determine a dispute, would continue to operate as a mandatory condition.

16. Regarding the implied bar contained in Section 9 of the Code of Civil Procedure, 1908 by the creation of a jurisdiction to resolve "all disputes conferred on a "Cooperative Courts by Section 73 of the Act, 2020 and the jurisdiction of "Special Courts for Cooperative Societies" to adjudicate on offences, Mr. Raza contended that these do not operate as an implied bar to the jurisdiction of this Court to adjudicate the causes of action of the captioned Suits.

17. Mr. Raza contended that "Special Courts for Cooperative Societies" were created by Section 117 but which only had jurisdiction to try "offences" as defined in Section 99 of the Act, 2020 and to disputes referred to in Section 78 of the Act, 2020. He further contended that as none of the offences under the Act, 2020 related to causes of action of a civil nature, no civil suit could be transferred to a "Special Courts for Cooperative Societies" as constituted under Section 117 of the Act, 2020 and hence would not attract the implied bar as contained in Section 9, of the Code of Civil Procedure, 1908 so as to allow for the transfer of each of the suits.

18. He maintained that under the dictates of Sub-Article (2) of Article 175 of the Constitution of Pakistan, 1973, all courts in Pakistan are "established by law", and exercise only that jurisdiction which is conferred on them "by the Constitution or by or under any law." It was submitted that as redundancy cannot be attributed to the legislature, as such the expression "by" could indicate the conferment of jurisdiction to a court through statute, and the expression "under" could indicate the conferment of jurisdiction to a court through subordinate legislation as the word "law" would include "statutory rules".

19. In respect of "Cooperative Courts" he submitted that while a reference has been made to such a court in Section 73 of the Act, 2020 there was no specific provision that existed in the Act, 2020 which created such a court and which had therefore not been "established by law", and hence could not be deemed to impliedly bar the jurisdiction of this Court under Section 9, Code of Civil Procedure, 1908.

20. He submitted that if one is to assume that the "Cooperative Courts" had been legally established under the Act, 2020, that even then, they would not have the jurisdiction "by or under any law" to impliedly oust the jurisdiction of civil courts

under Section 9, Code of Civil Procedure, 1908. He contended that as the language of Section 73 of the Act, 2020 failed to refer to the section on the basis of which the “Cooperative Courts” had been constituted, such an omission by the legislature must be considered as deliberate and could not be supplied by a Court through a judicial interpretative process unless a clear intention to constitute the same could be found within the four corners of the Act, 2020. It was submitted that even if recourse was taken to the “mischief rule”, the rule for beneficial and harmonious construction and to avoid repugnancy in the interpretation of statutes, this Court could not fill in the lacuna and “create” the “Cooperative Court” through a judicial pronouncement. To elaborate on this point, he stated that:

- (i) As, the legislature had not indicated in the Act, 2020 as to which Section established the Cooperative Courts, consequentially the rule of casus omissus i.e. an omission by the legislature in a statute, even if inadvertent, is deemed to be deliberate and cannot be supplied by Court through a judicial interpretative process unless clear reason for the same can be found within the four corners of a statute was not available to be applied in the circumstances. It was submitted that even under the mischief rule, the rule of beneficial and harmonious construction, or the rule to avoid repugnancy, this Court could not fill in the lacuna and create the “Cooperative Court” through a judicial pronouncement.
- (ii) as the expression "disputes" as used in Section 73 of the Act, 2020 had not been defined therein, and had actually been defined in Rule 53 of the Sind Cooperative Societies Rules, 2020, as such, the conferment of jurisdiction on “Cooperative Courts” through Sind Cooperative Societies Rules, 2020 was ultra vires of the Act, 2020 inasmuch as Section 118 does not delegate the power to confer jurisdiction on the “Cooperative Court” or the “Special Court for Cooperative Societies” through rules. As a consequence, the Government of Sindh notification dated 3 August 2021 notifying existing Courts across Sindh as “Special Courts for Cooperative Societies” to try offences under the Act 2020 may well be intra vires of the Act, 2020, the modification through a notification dated 9 August 2021 whereby the aforementioned “Special Courts for Cooperative Societies” were conferred with the additional jurisdiction to try “civil disputes” as mandated under the said Act and the rules made thereunder was ultra vires of the Act, 2020 as no jurisdiction was conferred on the “Special Courts for Cooperative Societies” to try civil disputes. To take the point further, he contended that the “Cooperative Court” had been completely “side-lined” and the

Special Courts for Cooperative Societies had been conferred jurisdiction to try offences and adjudicate disputes; and

- (iii) Finally, he contended that even if Rule 53 of the Sindh Cooperative Societies Rules, 2020 is found to be intra vires of the Act 2020, as the jurisdiction of the Special Court for Cooperative Societies would be limited to “disputes falling within the purview of that Rule i.e. having to “touch” the business of a Cooperative Society, and as the causes of action of these Suits are disputes which have no nexus with the business of the respective societies; this Court would retain its jurisdiction to entertain these suits.

21. In conclusion Mr. Raza contended that this Court had the requisite jurisdiction to entertain the Subject Suits and which should therefore be heard by this Court. All the other counsels representing Plaintiffs in the Suit adopted the arguments of Mr. Raza.

22. Mr. Nadir Khan Burdi who had appeared in Suit No. 424 of 2006 had maintained CMA No. 13832 of 2020 being an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking the rejection of the Plaint on the ground that the provisions of Section 70 of the Cooperative Societies Act, 1925 had not been complied with prior to institution of the Suit, but on which arguments were not heard and only issues as to whether the Suit was liable to be transferred were heard. Mr. Saathi M. Ishaq pressed that this Court had jurisdiction to try the Suit as the same was not maintainable before the “Special Court for Cooperative Societies”

23. Ms. Alizay Bashir had appeared on Court Notice and had submitted that the matter did not pertain to the Federation of Pakistan and was purely a Provincial Matter.

24. Heard arguments and perused the record.

C. Which Court has been Constituted and has Jurisdiction to hear matters under the Act, 2020

25. Each of these suits were instituted in respect of immovable properties located within a Cooperative Society that was previously regulated by the provisions of the Act, 1925 (hereinafter referred to as the “Act, 1925”) and which has since been repealed and replaced by the Act, 2020.

(i) **The Special Court for Cooperative Societies**

26. Section 117 of the Act, 2020 creates a court known as a “Special Court for Cooperative Societies” and which section reads as hereunder:

“ ... 117.(1) For the purpose of speedy justice, Government shall with the consultation of the Chief Justice of the Sindh High Court, by notification, specify for each Division, a court of Civil Judge / Assistant Sessions Judge to be a ‘Special Court for Cooperative Societies’ to try the offences under this Act.

(2) On establishment of Special Courts under sub-section (1), the cases falling within the purview of this Act pending in any court shall be transferred to the Special Court for trial.

(3) The Special Court established under sub-section (1), on taking cognizance of a case shall proceed with the trial from day-to-day and shall decide the case within one hundred and twenty days.”

As can be seen by virtue of Sub-Section (1) of Section 117 of the Act, 2020 a court known as the “Special Court for Cooperative Societies” has been constituted and which Court’s jurisdiction has been defined under that Section as being restricted to entertain matters pertaining to “offences” under that statute. Chapter X of the Act, 2020 deals with matters pertaining to “offences” and Section 99 of the Act, 2020 clarifies what are the offences prescribed under the Act, 2020 which the Special Court for Cooperative Societies would have jurisdiction to try and which are reproduced as hereunder:

“ ... 99. Offences

It shall be an offence under this Act if –

(a) default by a society, officer or member, a society with a working capital of rupees fifty thousand or more or an officer or member thereof fails without any reasonable excuse to give any notice, send any return or document, do or allow to be done anything which the society, officer or member is by this Act or rules made thereunder required to give, send, do or allow to be done; or

(b) willful neglect or default by a society, etc., a society or an officer or a member thereof willfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act or rules made thereunder by the Registrar or other officer duly authorized by him in writing in this behalf; or

(c) willful furnishing of false information, a society or an officer or member thereof willfully makes a false return or furnishes false information; or

(d) disobedience of summons, requisition, or order, any person willfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or rules made thereunder or does not furnish any information lawfully required from him by a an officer authorized to do so under the provisions of this Act or rules made thereunder;

(e) Failure to provide information. If a member, employee, director, officer or Secretary of the society or the society itself does not furnish information under section 26 (1), 26(2), 27 and 20(vii) (1)(2)(3), or does not comply with section 67 (1), 46 and 20(vii)(4) will be an offence under

this Act, or if the society fails to comply with any other provision of this Act.

Having defined the scope of the offences that are to be tried by the “Special Court for Cooperative Societies” Section 104 of the Act, 2020 contains an ouster clause which reads as hereinunder:

- “ ... 104. Cognizance of Offence
- (1) No Court other than the Special Court for Cooperative Societies established under section 121 shall try offences under this Chapter and disputes referred to in section 78.
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1989, every offence under this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.
- (3) No prosecution under this Act shall be lodged without the previous sanction of the Registrar, which shall not be given except after serving a notice on the party concerned and giving him a reasonable opportunity of being heard.”

The Section does not read rationally inasmuch as the “Special Court for Cooperative Societies” is not constituted under Section 121 of the Act, 2020, rather it is constituted under the Section 117 of the Act, 2020. In addition, when one is to read Section 78 of the Act, 2020 one would be hard pressed to find any reference therein to a “dispute” and which section reads as hereinunder:

- “ ... 78. Transfer of Property that cannot be sold
- (1) When in execution of an order sought to be executed under section 81 and 82 any property cannot be sold for want of buyers, if such property is in the occupancy of the defaulter or of some person on his behalf or of some person claiming under a title created by the defaulter subsequently to the issue of the certificate of the Registrar, Liquidator or Assistant Registrar under clause (a) or (b) of sub-section (1) of section 81, the Court or the Collector, as the case may be may, with the previous consent of the Registrar, direct that the said property or any portion thereof shall be transferred to the society which has applied for the execution of the said order and that the said property or the portion shall be delivered to the society in the prescribed manner.
- (2) Subject to such rules as may be made in this behalf and to any right, encumbrances, charges or equities lawfully subsisting in favour of any other person, such property or portion thereof shall be held by the said society on such terms and conditions as may be agreed upon between the Court or the Collector, as the case may be, and the said society:
- Provided that any private transfer or delivery of or encumbrance or charge on the property made or created after the issue of the certificate of the Registrar, Liquidator or Assistant Registrar, as the case may be, under section 73 shall be null and void as against the said society.*”

The section, as can be seen, does not refer to any dispute that can be adjudicated by the “Special Court for Cooperative Societies” rather it outlines a procedure to be followed where property cannot be sold pursuant to orders passed under Section 81 and 82 of the Act, 2020 and *inter alia* confers a power on a “Court” to direct that the property should be transferred to the Society who owns the property and under Sub-Section (2) of Section 78 of the Act, 2020 gives the powers

to a “**Court**” to determine the “terms and conditions” on the basis of which the property would be held by the Cooperative Society. It would therefore seem to the extent that the Court attempts to exercise such a power in favour of the Society and such a right of the Society is contested, it would be considered as a dispute triable by “the Court”.

27. I am of the opinion that in Sub-Section (1) of Section 104 of the Act, 2020, the reference to Section 121 should be considered as one of a series of “typographical errors” that has been made by the Statutory Draftsman throughout the Act, 2020 and should be read as referring to Section 117 of the Act, 2020 as to do otherwise would lead to an absurdity.²

(ii) Court of Justice, Civil Court, Court, Cooperative Court and Special Court for Cooperative Societies.

28. As noted hereinabove, the reference made in Section 78 of the Act, 2020 is to a “Court” and not the “Special Court for Cooperative Societies”. Similarly in Section 36 of the Act, 2020 a reference is made to a “Court of justice”, in Sub-Section (2) of Section 41 of the Act, 2020 and as stated hereinabove in Section 78 of the Act, 2020 a reference is made to a “Court”, in Section 70, 74, Sub-Section (a) of Section 75, Sub-Section (a) of Section 76, 77 and 96 of the Act, 2020 reference is made to a “Civil Court”, while in Section 73 reference is made to a “Cooperative Court.

29. The difference in the language within a statute creates an impression that a distinction is to be made as between a “Court”, Civil Court, Cooperative Court and the “Special Court of Cooperative Societies”. While the concept of “Court of Justice” and “Civil Court” must be considered as being synonymous with a Court exercising jurisdiction under Section 9 of the Code of Civil Procedure, 1908; Section 117 of the Act, 2020 refers to a “Special Court for Cooperative Societies”, Section (2) of Section 41 and Section 78 of the Act, 2020 further refer to a “Court” and the provisions of Section 73 of the 2020, Act refers to a third entity known as the “Cooperative Court” and which section reads as hereinunder:

“ .. 73. *Disputes referred to the Cooperative Court.*

*All disputes (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society and liquidation disputes) shall be tried by the **Cooperative Court** established under section.”*

When one is to consider this Section, the words “all disputes” as contained in the section reads as an omnibus provision and therefore necessary includes all

² See **House Building Finance Corporation vs. Shahinshah Humayun Cooperative House Building Society** 1992 SCMR 19 and **Haji Adam Ali Agaria vs. Asif Hussain** 1996 MLD 322

disputes, other than the exceptions created in that section and which relate to disciplinary action taken by the society or its committee against a paid servant of the society or in respect of any liquidation disputes and which are all prescribed to come within the jurisdiction of a “Cooperative Court” to adjudicate on. However, the section does not read rationally. A reference is made to the Cooperative Court “established under section” but fails to clarify as to which section of the 2020, Act is being referred to? Secondly as the only “Court” created by the 2020, Act is created by Sub-Section (1) of Section 117 of the 2020, Act and which is referred to in that Section as the “Special Court for Cooperative Societies” a confusion is created as to whether there is a distinction to be made as between a “Cooperative Court” as referred to in Section 73, a “Court” as referred to in Sub-Section (2) of Section 41 and Section 78 of the Act, 2020 and a “Special Court for Cooperative Societies” as is referred to in Sub-Section (1) of Section 117 of the Act, 2020 and to what each of their jurisdictions actually are.

30. To begin with I am clear that the jurisdiction conferred on the “Special Courts for Cooperative Societies” has been conferred by Sub-Section (1) of Section 117 of the Act, 2020 and which is limited by that Sub-Section to the trial of offences as listed in Section 99 of the Act, 2020. I am equally clear that a literal reading of neither Section 73 nor Sub-Section (2) of Section 41 and 78 of the Act, 2020 is not possible and which is on account of two factors. Firstly, the 2020, Act neither creates a “Court” or a “Cooperative Court” and only creates a “Special Court for Cooperative Societies.” There being a distinction in the language the literal reading of each of the sections leads to an absurdity as a right to try the disputes and exercise powers conferred therein aside for overlapping have been conferred on two different entities i.e. a “Court” and a “Cooperative Court” neither of which have been created by the Act, 2020 and hence do not exist! It is, however, open however me, to overcome such an absurdity by reading the expression “Cooperative Court” as used in Section 73 of the Act, 2020 and the expression “Court” as used in Sub-Section (2) of Section 41 and Section 78 of the Act, 2020 as a reference to the “Special Court for Cooperative Societies” as created under Sub-Section (1) of Section 117 of the Act, 2020 and which would hence resolve the issue of overlap and the issue of the absurdity as occurring in each of those sections of the Act, 2020.³ The problem, however, does not end there. The lack of a reference to a section under which the “Cooperative Court” referred to in Section 73, is to be constituted adds a further hurdle to be crossed. This can however be filled by applying the rule of casus omissus⁴ and by referencing the

³ See *House Building Finance Corporation vs. Shahinshah Humayun Cooperative House Building Society* 1992 SCMR 19 and *Haji Adam Ali Agaria vs. Asif Hussain* 1996 MLD 322

⁴ See *Deputy Director Finance and Administration Fata Through Additional Chief Secretary Fata, Peshawar vs. Dr. Lal Marjan* 2022 SCMR 566; *The Collector of Sales Tax, Gujranwala vs. Super Asia Mohammad Din and Sons* 2017 SCMR 1427; *Abdul Haq Khan vs. Haji Ameerzada* PLD 2017 SC 105; *Khushi Muhammad vs. Mst. Fazal Bibi* PLD 2016 SC 872; *Dr. Zahid Javed vs. Dr. Tahir Riaz Chaudhary* PLD 106 SC

Section by inserting the numbers “117” and rendering Section 73 of the Act, 2020 and Section 78 of the Act, 2020 to be read as hereunder:

“ ... 41. *Admissibility of copy of entry as evidence.*

(1) A copy of any entry in any book, register or list regularly kept in the course of business in the possession of a society shall, if duly certified in such manner as may be prescribed by the rules, be admissible in evidence of the existence of the entry and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which the original entry would, if produced, have been admissible to prove such matters.

(2) In the case of such societies as Government by general or special order may direct, no officer of a society shall in any legal proceedings to which the society is not a party be compelled to produce any of the society’s books, the contents of which can be proved under sub-section(1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Special Court For Cooperative Societies or a Judge made for special cause.

...

73. *Disputes referred to the Special Court for Cooperative Societies.*

All disputes (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society and liquidation disputes) shall be tried by the Special Court for Cooperative Societies established under section 117.”

78. *Transfer of Property that cannot be sold*

(1) When in execution of an order sought to be executed under section 81 and 82 any property cannot be sold for want of buyers, if such property is in the occupancy of the defaulter or of some person on his behalf or of some person claiming under a title created by the defaulter subsequently to the issue of the certificate of the Registrar, Liquidator or Assistant Registrar under clause (a) or (b) of sub-section (1) of section 81, the Special Court for Cooperative Societies or the Collector, as the case may be may, with the previous consent of the Registrar, direct that the said property or any portion thereof shall be transferred to the society which has applied for the execution of the said order and that the said property or the portion shall be delivered to the society in the prescribed manner.

(2) Subject to such rules as may be made in this behalf and to any right, encumbrances, charges or equities lawfully subsisting in favour of any other person, such property or portion thereof shall be held by the said society on such terms and conditions as may be agreed upon between the Special Court for Cooperative Societies or the Collector, as the case may be, and the said society:

Provided that any private transfer or delivery of or encumbrance or charge on the property made or created after the issue of the certificate of the Registrar, Liquidator or Assistant Registrar, as the case may be, under section 73 shall be null and void as against the said society.”

637; **Nadeem Ahmed vs. Federation of Pakistan** 2013 SCMR 1062; **REFERENCE NO.01 OF 2012** PLD 1013 SC ;279; **Messrs State Cement Corporation Of Pakistan vs. Collector Of Customs, Karachi**. 1998 PTD 2999; **Zain Yar Khan vs. Chief Engineer, C.R.B.C. - WAPDA, D.I. KHan** 1998 SCMR 2419; **Amanullah Khan vs. Chief Secretary, Government Of N.W.F.P.** 1995 SCMR 1856;

(iii) **The Jurisdiction of the Special Court for Cooperative Societies**

31. But what is the jurisdiction of the “Special Court for Cooperative Societies”? As clarified hereinabove, **Sub-Section (1) of Section 117 of the Act, 2020 has conferred on the “Special Court for Cooperative Societies”, the jurisdiction to try “offences” under the Act, 2020 and which are detailed in Section 99 of the Act, 2020. This much is clear.** However, with regard to the right to adjudicate “all disputes” under Section 73 of the Act, 2020 the matter is more complicated.

(a) **Section 73 of the Act, 2020**

32. Section 73 of the Act, 2020 confers the jurisdiction on the Special Court of for Cooperative Societies to try “all disputes” except “disputes regarding disciplinary action taken by the society or its committee against a paid servant of the society and liquidation disputes”. This section finds itself placed in Chapter VIII of the Act, 2020 and which chapter is entitled “Liquidation and Arbitration”. The relevance of placing a section within a Chapter or “Part” was elaborated on by S.M. Zafar in his treatise **Understanding Statutes Canons of Construction** and wherein he has clarified on the relevance of such chapters or parts as referred therein and has considered that:⁵

“ ... 7. Parts and Division

In the longer Acts of Parliament it is quite common to find a number of sections treated as a group. That group is known as a part. If the number of section in a part is sufficient to justify doing so, that part may itself be divided into smaller groups of sections and those smaller groups are known as divisions.

If an Act is divided into parts and divisions, the Courts will ordinarily assume that the dividing of the Act in that way is intended to indicate that group of section in that part or in the division related to a particular subject. They will not read a section in that part or division, relating to a subject-matter that is dealt with in another part or division of the Act unless it is clear from the wording of the section that it must be read in that way and that section has therefore been placed in the wrong part of division. The reasons of dividing an Act into parts to elucidate both the objects and scope of such a division was given by Holroyd, J. in Australian case *Re the Commercial Bank: of Australia Ltd*:

"When an Act is divided and cut into parts or head, prima facie it is, we think: to be presumed that those heads were intended to indicate a certain group of clauses as relating to a particular object..... The object prima facie to enable everybody who reads to discriminate as to what clauses relate to such and such a subject matter. It must perfectly be clear that a clause introduced into a part of an Act relating to one subject matter is meant to relate to other subject matters in another part of the Act we can hold that it does so."

*If, however, **it is clear from the section** that it has been included in an inappropriate part or division, section will be given its full clear meaning irrespective of the part or division in which it is placed. An example of this to be found in the New South Wales Act of Parliament which contained a section providing for the punishment of any person who neglected or ill-treated a child.*

⁵ Zafar, S.M. (2016) **Understanding Statutes Canons of Construction**, Lahore, Manzoor Law Book House, Revised Edition at pg. 64-65

The section occurred in a part of the Act dealing with the adoption of children, but the New South Wales Supreme Court held it applied to all cases of neglect or ill treatment of a child and was not limited to the neglect or ill treatment of an adopted child."

The principle of law relating to interpretation of a statute that can be considered is therefore that where **a section** has been arranged by the legislature in a part or chapter of a statute, it must be considered that **the section** is relevant only to the subject matter covered by that part or chapter and not to the rest of the statute. However, where such an intention is not evident from **the section** then it can be considered to apply to the subject matter covered by the entire statute. It is therefore apparent that one is to look at each individual section in a chapter to understand the intention of the legislature and not to each of the sections in the chapter as a whole.

33. If one is to consider the provisions of Section 117 of the Act, 2020, which is found under Chapter XII under the heading "Miscellaneous" it becomes apparent that the legislature while conferring jurisdiction on the "Special Court for Cooperative Societies" to try offences under the Act, 2020 could well have considered to confer the jurisdiction to try "all disputes" relating to matters under the Act, 2020 in that Section. The fact that the legislature hasn't and has instead placed it in Section 73 of the Act, 2020 under the Part entitled "Liquidation and Arbitration" could lead to an interpretation that the expression "all disputes" as used in Section 73 of the Act, 2020 must be read as being in respect of "all disputes" that exist under the Chapter or Part entitled Arbitration and Liquidation and not as an omnibus provision in respect of "all disputes" under the Act, 2020.

34. Such an interpretation would be a false dawn. When one is to look at the various sections contained under Chapter VIII of the Act, 2020, Sections 64 to 72 and 75 relate exclusively to the liquidation of a society, the other sections relate to the power conferred on the Registrar to recover any amount by attaching and selling property and powers given to enforce order of Dstraint as contained in Chapter IX. The exceptions contained in Section 73 of the Act, 2020, to the jurisdiction conferred on the Special Court for Cooperative Societies to try "all" disputes, exclude matters "*regarding disciplinary action taken by the society or its committee against a paid servant of the society and liquidation disputes.*" If one to consider the exceptions that are being made it is plain to see that a matter pertaining to "*disciplinary action taken by the society or its committee against a paid servant of the society*" has no linkage to with any of the matters contained in Chapter VIII of the Act, 2020 and as they are being "excepted" from the expression "all disputes", it would seem that the intention of the Provincial Assembly was to include in the expression "all disputes" such disputes that would be relating to any rights and obligations regulated by the Act, 2020 and not simply disputes in respect

of matters under Chapter VIII of the Act, 2020. **To that extent I am of the opinion that the expression “all disputes” as used in Section 73 of the Act, 2020 has to be considered to refer to all disputes that would be relating to any rights and obligations regulated by the Act, 2020.**

(b) Rule 53 of the Sindh Cooperative Societies Rules, 2020

35. Some clarity is sought to be given in Rule 53 of the Sindh Cooperative Societies Rules, 2020 as to which disputes would come within the jurisdiction of the “Sindh Cooperative Societies Court” and which are prescribed therein as hereinunder:

“ ... 53. Disputes.

(1) If any dispute touching the **business of a society** other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society arises:-

(a) between members on past members of the society or persons claiming through a member or past member; or

(b) between members or past members or persons so claiming and any past or present officer, agent or servant of the society, or

(c) between the society for its committee and past or present member of the society; or

(d) between the society or its committee and any past or present officer, agent or servant of the society, or a surety of such officer, agent or servant, whether such surety is a member of the society or surety of such officer, agent or servant, whether such surety is or is not a member of the society

(e) between a society authorized under sub-section (1) of section 45 and a person who is not a member of a society.

It shall be referred to Cooperative Court established under section 117 established by Government, with the concurrences of the Chief Justice of the Sindh High Court, by notification.”

(2) Any party aggrieved by any decision, order of judgment of the Special Court for Cooperatives, may within 30 days of the date of such decision, order or judgment, appeal to the High Court of Sindh.”

Mr. Muhammad Basim Raza has raised objections as to the manner in which this has been done by the Executive. His contention is that as the expression “disputes” has not been defined by the Provincial Assembly in the Act, 2020, hence it is not open to the Executive through delegated legislation to define such an expression in Rule 53 of the Sindh Cooperative Societies Rules, 2020.

36. Under the Constitution of the Islamic Republic of Pakistan, 1973 the right to make a “law” by promulgation of statute has been determined in Article 141 of the Constitution of the Islamic Republic of Pakistan, 1973 and which reads as hereinunder:

“ ... Subject to the Constitution, Majlis-e-Shoora (Parliament)] may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof.”

While there can be no doubt as to the exigency to implement such laws as passed by the Majlis e Shoora or the Provincial Assembly by the Executive through Delegated Legislation e.g. by Rules, Regulations etc., the power to exercise such powers is not unlimited and is regulated by the courts through various principles and doctrines which are as hereinunder:

- (i) The first limitation is the well-known “doctrine of ultra vires” and where, if the Executive exceeds its mandate and acts in a manner in excess of the powers conferred to it under the statute, then such delegated legislation is considered to be ultra vires the powers conferred on it under the statute and hence void.⁶ I would add that, to my mind, such an excessive use of power would, also amount to the Executive in effect exercising a legislative function and thereby acting in violation of Article 141 of the Constitution of the Islamic Republic of Pakistan, 1973.
- (ii) The second limitation on the right to delegate would be where the Executive, when conferred with a powers under a statute to make delegated legislation, acts on such powers without a policy being clearly defined in the enabling statute by the Majlis e Shoora or by the Provincial Assembly, thereby leaving an ambiguity as to what has exactly been delegated and hence as to what the Executive can or cannot implement through delegated legislation and which may at times consequentially also lead to a discriminative application of the law. In Crawford’s treatise entitled the **Construction of Statutes** while elaborating on this rule it was considered that:⁷

“ ... The legislature can as we have already indicated, under certain circumstances, delegate to executive officers and administrative boards, the authority to adopt and promulgate rules and regulations. Before such a delegation is lawful, however, the legislature must declare the policy of the law and fix the legal principles which are control in given cases; that is a definite or primary standard must be provided to guide those empowered to execute the law.”

⁶ See **Province of East Pakistan vs. Nur Ahmad and another** PLD 1964 SC 451; **Khawaja Ahmad Hassan vs. Government of Punjab** 2005 SCMR 186; **Zarai Taraqati Bank Limited and others vs. Said Rehman and others** 2013 SCMR 642; **Azam Wazir Khan vs. Messrs Industrial Development Bank of Pakistan and others** 2013 SCMR 678; **Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat Islamabad and others** 2015 SCMR 630; **Mir Shabbir Ali Khan Bijrani and 3 others vs. Federation of Pakistan and others** PLD 2018 Sindh 603. **Messrs Asio African Co. (Pvt.) Ltd. and others vs. Federation of Pakistan** 2019 PTD 1368

⁷ Crawford, E.T. (2022) **The Construction of Statutes**, Karachi (Reprint) Pakistan Law House, at pgs. 17 and 18

The principle has been recognised and approved by the Supreme Court of Pakistan⁸ in the decision reported as **Province of East Pakistan vs. Siraj ul Haq Patwari**,⁹

wherein it was held that:

“ ... *If the subject-matter of legislation is within the competence of the Legislature than it can certainly legislate in any one of the generally accepted forms of legislation either directly or referentially, absolutely or conditionally within its own sphere of legislation and it has always been recognized under all systems of legislation that the Legislature may well leave it to some external authority to implement its policy or to determine a state of things on which the law intends to make its action depend or to fix in its discretion the time at which the law is to come into operation, the area over which it is to extend and the manner in which it is to be carried into effect. This principle was not only laid down by the Privy Council in the case of *The Queen v. Burah* ((1878) 3 App. Cas. 889) and followed by this Court in the case of *the District Magistrate, Lahore v. Raza Kazim* (P L D 1961 S C 178), but even the famous American jurist Thomas M. Cooley in his treatise on Constitutional Limitations recognise that "it is not always essential that a legislative act should be a completed statute which must in any event take effect as law, at the time it leaves the hands of the legislative department. A statute may be conditional, and its taking effect may be made to depend upon some subsequent event." (Vide Volume 1, page 227). Again, at page 228 the same learned author states :-*

"The maxim that power conferred upon the Legislature to make laws cannot be delegated to any other authority does not preclude the Legislature from delegating any power not legislative which it may itself rightfully exercise. It may confer an authority in relation to the execution of a law which may involve discretion, but such authority must be exercised under and in pursuance of the law. The Legislature must declare the a policy of the law and fix the legal principles which are to control in given cases; but an administrative officer or body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be done there would be infinite confusion in the laws, and in an effort to detail and to particularize, they would miss sufficiency both in provision and execution."

Similarly in the decision reported as **Waris Meah vs. The State**¹⁰ the Supreme Court of Pakistan held that:

“ ... *Three tribunals with different powers and procedures have been set up. The Act creating them contains no indication as to which class or classes of cases are to go before a Court and which before the Tribunal and the Adjudication Office, and it does not impose upon the Central Government the obligation or expressly confer on it the power of making rules with a view to classifying the cases to be tried by each of these tribunals. Nor does it define the principle or policy on which such classification may be made by the Central Government or the State Bank. ...*

In our view such a law has the effect of doing indirectly i.e. by leaving the discrimination within the unguided and unfettered discretion of

⁸ See **Jobendra Kishore Acharyaa Chowdhury and others vs. The Province of East Pakistan** PLD 1959 SC 9 **Messrs East and West Steamship Company vs. Pakistan** PLD 1958 SC (Pak) 41; and **Province of East Pakistan vs. Siraj ul Haq Patwari** PLD 1966 SC 854;

⁹ PLD 1966 SC 854

¹⁰ PLD 1957 SC (Pak) 107

statutory authorities what it could not do directly i.e. to treat unequally persons falling within the same class, upon a basis which bears no reasonable relation to the purposes of the law. The Act is, therefore, in our opinion, in relation to its discriminatory provisions inconsistent with the declaration of equality in article 5(1) of the Constitution."

The decision was followed by the Supreme Court of Pakistan in **F.B. Ali vs. The State**¹¹ wherein it was held that:

" ... Where however, the law itself makes no classification but leaves the section to an outside agency or an administrative body without laying down any guidelines, thus enabling the body or authority to pick and choose, a legitimate complaint may be made on the ground that that law itself permits discriminatory application. Such was the position which came under consideration by this Court in the case of *Waris Meah vs. The State* [PLD 1957 SC (Pak) 157 where this Court struck down the law on the ground that it was violative of this particular right"

Each of the above two mentioned decision were approved by the Supreme Court of Pakistan in the opinion reported as **In the matter of: Reference No. 2 of 2005 by the President of Pakistan**¹²

- (iii) Finally, it has been considered that there are some powers conferred under the Constitution of the Islamic Republic of Pakistan, 1973 on the Majlis e Shoora and the Provincial Assembly, which can never be delegated to the executive and which hence remain in the sole domain of those two bodies. The principle, which is referred to in the United States of America as the "Nondelegation Doctrine", has been clarified by the Supreme Court of the United States of America in numerous judgements and is premised on the works of John Locke.¹³ In the decision reported as **Wayman v. Southard**¹⁴ Marshal J, C.J., had first opined that:

" ... The line has not been exactly drawn which separates those important subjects, which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, and power given to those who are to act under such general provisions to fill up the detail. ... "

A summation of the principles, was made by the Supreme Court of the United States of America in a decision reported as **J. W. Hampton, Jr. & Co. v. United States**¹⁵ and wherein it was opined that:

¹¹ PLD 1975 SC 506

¹² PLD 2005 SC 873 at pgs. 929-930

¹³ Locke, J. (1690) **Two Treatises of Government**, London, Awnsham Churchill

¹⁴ 23 U.S. 1 (1825)

¹⁵ 276 U.S. 394 (1928)

“ ... The well-known maxim "*Delegata potestas non potest delegari*," applicable to the law of agency in the general and common law, is well understood and has had wider application in the construction of our Federal and State Constitutions than it has in private law. The Federal Constitution and State Constitutions of this country divide the governmental power into three branches. The first is the legislative, the second is the executive, and the third is the judicial, and the rule is that in the actual administration of the government Congress or the Legislature should exercise the legislative power, the President or the State executive, the Governor, the executive power, and the Courts or the judiciary the judicial power, and in carrying out that constitutional division into three branches it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or if by law it attempts to invest itself or its members with either executive power or judicial power. This is not to say that the three branches are not co-ordinate parts of one government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental co-ordination.

The field of Congress involves all and many varieties of legislative action, and Congress has found it frequently necessary to use officers of the Executive Branch, within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution, even to the extent of providing for penalizing a breach of such regulations. *United States v. Grimaud*, 220 U.S. 506, 518; *Union Bridge Co. v. United States*, 204 U.S. 364; *Buttfield v. Stranahan*, 192 U.S. 470; *In re Kollock*, 165 U.S. 526; *Oceanic Navigation Co. v. Stranahan*, 214 U.S. 320.

Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an Executive, or, as often happens in matters of state legislation, it may be left to a popular vote of the residents of a district to be effected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district. As Judge Ranney of the Ohio Supreme Court in *Cincinnati, Wilmington and Zanesville Railroad Co. v. Commissioners*, 1 Ohio St. 77, 88, said in such a case:

"The true distinction, therefore, is, between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." See also *Moers v. Reading*, 21 Penn. St. 188, 202; *Locke's Appeal*, 72 Penn. St. 491, 498.

Again, one of the great functions conferred on Congress by the Federal Constitution is the regulation of interstate commerce and rates to be exacted by interstate carriers for the passenger and merchandise traffic. The rates to be fixed are myriad. If Congress were to be required to fix every rate, it would be impossible to exercise the power at all. Therefore, common sense requires that in the fixing of such rates, Congress may provide a Commission, as it does, called the Interstate Commerce Commission, to fix those rates, after hearing evidence and argument concerning them from interested parties, all in accord with a general rule that Congress first lays down, that rates shall be just

and reasonable considering the service given, and not discriminatory. As said by this Court in *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U.S. 194, 214, "The Congress may not delegate its purely legislative power to a commission, but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress."

The Supreme Court of Pakistan had recognised this doctrine in the decision reported as **Pak. Tobacco Company Ltd. and others v. Government of N.W.F.P. through Secretary Law and others:**¹⁶

" ... There is consensus of the judicial opinion that delegation of powers should not be uncontrolled and unbridled and to check the arbitrary attitude of the executive in exercise of powers, the Legislature must provide some guidelines based on the policy of the Government to exercise such powers. ...

"When India became a sovereign democratic Republic on 26th January, 1950, the validity of all laws had to be tested on the touchstone of the new Constitution and all laws made before the coming into force of the Constitution have to stand the test for their validity on the provisions of Part III of the Constitution." (1) This is why the principle of excessive delegation, that is to say, the making over by the legislature of the essential principles of legislation to another body, becomes relevant in the present debate. Under our constitutional scheme the legislature must retain in its own hands the essential legislative functions. Exactly what constitutes the essential legislative functions is difficult to define in general terms, but this much was clear that the essential legislative function must at least consist of the determination of the legislative policy and its formulation as a binding rule of conduct. Thus where the law passed by the legislature declares the legislative policy and lays down the standard which is enacted into a rule of law, it can leave the task of subordinate legislation which by its very nature is ancillary to the statute to subordinate bodies, i.e., the making of rules, regulations or bye-laws. The subordinate authority must do so within the frame-work of the law which makes the delegation. and such subordinate legislation has to be consistent with the law under which it is made and cannot go beyond the limits of the policy and standard laid down in the law. Provided the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case.

In *Vasanthlal Manganbhai Sajanwal v. The State of Bombay*, 1961 SCR 341: (AIR 1961 SC 4) the above proposition was summarized in following words :-

"A statute challenged on the ground of excessive delegation must therefore, be subject to two tests, (1) whether it delegates essential legislative function or power, and (2) whether the Legislature has enunciated its policy and principle for the guidance of the delegate."

Likewise a learned Division Bench of Lahore High Court, Lahore in case of *Muhammad Aslam and others v., Punjab Government and others* (1996 MLD 685) following the judgments from our own jurisdiction in the cases reported in PLD 1958 SC 41, PLD 1965. Dacca 156, PLD 1966

¹⁶ PLD 2002 SC 460

SC 854 PLD 1988 SC 416 has held that naked, unbridled and unguided powers cannot be conferred upon the outside agency like executive."

The doctrine was approved and followed by the Supreme Court of Pakistan in the opinion reported as **In the matter of: Reference No. 2 of 2005 by the President of Pakistan**¹⁷ wherein after relying on the decision hereinabove, the Supreme Court of Pakistan applied the test and held that:

" ... 66. *The observations noted herein-above are based on the following two tests, (1) whether it delegates essential legislative functions or powers (2) whether the legislature has enunciated its policy or principle for the guidance of the delegatee Vasanlal Maganbhai vs. State of Bombay [AIR 1961 SC 4]. Applying above test to the provisions of Section 23, discussed herein-above in detail, suggest to hold that none of these tests have been fulfilled, therefore, for violation of the provisions of Articles 4, 9, 14, 16, 18, 20, 25 of the Constitution, these provisions are not sustainable being ultra vires the constitution."*

It would therefore seem that the Supreme Court of Pakistan has recognised the application of the "Nondelegation Doctrine" in its application to the Constitution of the Islamic Republic of Pakistan, 1973.

37. Mr. Muhammad Basim Raza has relied on the second principle and contended that the expression "dispute" having not be clearly defined by the Provincial Assembly, an attempt in Rule 53 of the Sindh Cooperative Societies Rules, 2020 to define such an expression would amount to an arbitrary exercise of discretion and hence cannot be sustained. I am inclined to agree with Mr. Raza. I have perused the Act, 2020 and am unable to find any definition given to the expression "Dispute" in that Statute. Equally unavailable in the Act, 2020 are any prescriptions that can be considered to form the basis of any policy by which one is able to ascertain what the intent of the Provincial Assembly when conferring jurisdiction on the Special Court for Cooperative Societies, other than in respect of the trial of offences. The only expression that exists which can possibly be considered to define such a policy is the adverb "all" and which to my mind is an expression which is too wide and vague to be considered as the basis for such a policy and which seems to me to be more of an abdication of legislative function than an exercise of it. I am therefore of the opinion that the attempt made by the Government of Sindh to determine the jurisdiction of the "Special Court for Cooperative Societies" through Rule 53 of the Sindh Cooperative Societies Rules, 2020 falls afoul of the decisions of the Supreme Court of Pakistan reported as **Province of East Pakistan vs. Siraj ul Haq Patwari**;¹⁸ **Waris Meah vs. The State**;¹⁹ **F.B. Ali vs. The State**;²⁰ and **In the matter of: Reference No. 2 of 2005**

¹⁷ PLD 2005 SC 873 at pgs. 929-930

¹⁸ PLD 1966 SC 854

¹⁹ PLD 1957 SC (Pak) 107

²⁰ PLD 1975 SC 506

by the President of Pakistan²¹ and hence cannot be considered to be the basis of determining the jurisdiction of that Court to try disputes as referred to in Section 73 of the Act, 2020.

38. While the lack of any policy being apparent in the Act, 2020 to determine what disputes would be referred to the Special Courts for Cooperative Societies would, to my mind, be enough to render the prescriptions of Rule 53 of the Sindh Cooperative Societies Rules, 2020 invalid. It is moot whether that Rule would also fall afoul of the Nondelegation Doctrine. Being premised on the theory of Trichotomy of Powers,²² the Nondelegation Doctrine, as accepted by the Supreme Court of Pakistan, would apply to the powers vested in both the Majlis e Shoora and the Provincial Assemblies under the Constitution of the Islamic Republic of Pakistan, 1973. The question that would have to be answered is whether the power to constitute a court and to determine its jurisdiction is a legislative function solely within the ambit of either the Majlis e Shoora or a Provincial Assembly or whether such power can be delegated. While such a power may well qualify as one of the “important subjects which must be entirely regulated by the legislature itself” and which should never be delegable and also acknowledging the width of that powers that have been delegated by the Provincial Assembly to the Government of Sindh under Section 118 of the Act, 2020 on which it can frame rules, I would have thought that the authority conferred with the powers to implement the provisions of the Act, 2020 i.e. the Government of Sindh and as against whom such litigation may be maintained before the “Special Court of Court Cooperative Societies”, cannot have the power to determine the jurisdiction of the Court which would decide cases or hear appeals in respect of disputes that would be maintained as against itself! However, Mr. Raza has correctly referred me to Sub-Article (2) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 and which reads as hereinunder:

²¹ PLD 2005 SC 873 at pgs. 929-930

²² See Imran Ahmad Khan Niazi vs. Federation of Pakistan through Secretary Law and Justice Division, Islamabad PLD 2024 Supreme Court 102; Province of Sindh vs. Sartaj Hyder 2023 SCMR 459; Dr. Muhamamd Saeed vs. Government of Balochistan 2023 SCMR 2119; Hadayat Ullah vs. Federation Of Pakistan 2022 SCMR 1691; Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar vs. Sher Aman 2022 SCMR 406; Chief Executive Officer, Multan Electric Power Company Ltd, Khanewal Road, Multan vs. Muhammad Ilyas 2021 SCMR 775; Jurists Foundation through Chairman vs. Federal Government through Secretary Ministry of Defence PLD 2020 Supreme Court 1; Muhammad Hanif vs. State 2019 SCMR 2029; National Commission of Status of Women vs. Government of Pakistan through Secretary Law and Justice PLD 2019 SC 218; Mustafa Impex, Karachi vs. The Government of Pakistan through Secretary Finance, Islamabad 2016 PTD 2269; District Bar Association, Rawalpindi vs. Federation of Pakistan PLD 2015 Supreme Court 401; Khawaja Muhammad Asif vs. Federation of Pakistan 2013 SCMR 1205; Sh. Riaz ul Haq vs. Federation of Pakistan through Ministry of Law PLD 2013 Supreme Court 501; Muhammad Yasin vs. Federation of Pakistan through Secretary, Establishment Division, Islamabad PLD 2012 Supreme Court 132; Province of Sindh through Chief Secretary vs. Rasheed A. Razvi PLD 2012 Supreme Court 649; Syed Yousaf Raza Gillani vs. Assistant Registrar Supreme Court of Pakistan PLD 2012 SC 466; Munir Hussain Bhatti vs. Federation of Pakistan PLD 2011 Supreme Court 407; Registrar, Supreme Court of Pakistan, Islamabad vs. Wali Muhammad 1997 SCMR 141;

“ ... (2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.”

On a literal reading it is apparent that jurisdiction that is to be exercised by a Court can be conferred on it by the Constitution or “by any law” or “under any law.” While understanding what is meant by the jurisdiction conferred by the Constitution is easy enough e.g. Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and while it is also easy enough to understand how jurisdiction is conferred “by any law” i.e. where a statute prescribes through a Section the jurisdiction of a Court, when one is to consider the expression “under any law” and contrast it with the expression “by any law” one can only consider that the expression would mean, as correctly suggested by Mr. Raza, through delegated legislation. It would therefore seem that under our Constitution the power to confer jurisdiction on a court can be achieved by the Executive through delegated legislation within the prescriptions of Sub-Article (2) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973. Whether or not such rights as conferred in Sub-Article (2) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 would or would not violate the “Basic Structure Doctrine” as infringing the theory of Trichotomy of Powers would have to be considered in appropriate proceedings.

39. To conclude, I am of the opinion that there being no policy available in the 2020 Act, to determine what disputes are to be maintained before the “Special Court for Cooperative Societies”, as such Rule 53 of the Sindh Cooperative Societies Rules, 2020, being in the nature of delegated legislation, cannot be made the basis of determining the jurisdiction of the “Special Court for Cooperative Societies” to determine what disputes are justiciable before that Court under Section 73 of the Act, 2020 and which court’s jurisdiction must therefore be ascertained from the provisions of the Act, 2020 itself; the natural meaning given to the expression “all Disputes” having to be applied **in the context of rights and obligations regulated by the Act, 2020** and which therefore would be the basis for determining as to whether or not the Special Court for Cooperative Societies has jurisdiction to hear each of the subject suits.

D. Ouster Clauses

(i) Section 9 of the Code of Civil Procedure

40. Section 9 of the Code of Civil Procedure, 1908 prescribes the jurisdiction of a civil court to adjudicate on issues which reads as hereinafter:

“ ... 9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

In this context it becomes apparent that the jurisdiction of this court is to take cognizance of a suit of a civil nature unless the jurisdiction is either “*expressly or impliedly barred.*” The exclusion of a civil courts jurisdiction is often achieved by the introduction in a statute of an ouster clause that would, through a law, prevent a court from exercising a jurisdiction to review actions and decision of a public body. Aside from the statutory recognition in Section 9 of the Code of Civil Procedure, 1908 of there being “express” and “implied” ouster clauses, they can also be more colloquially classified as “absolute” ouster clauses in the sense that the section of the statute would attempt to completely exclude the jurisdiction of the Court or they could be “conditional” ouster clauses in as much as the jurisdiction would be excluded until a condition had been complied with and whereafter the jurisdiction of the Court would resume.

41. In the United Kingdom, the temperament of the High Court, has been described by the Supreme Court of the United Kingdom, in the decision reported as **R (on the application of Privacy International vs. Investigatory Powers Tribunal and Others**,²³ as being a “hostile attitude ... to attempts by statute to restrict its supervisory role” and in which the majority of the Supreme Court of the United Kingdom has expanded the jurisdiction of a court to judicially review an ouster clause beyond the established grounds of excess or abuse of jurisdiction or error of law and wherein it was held that:

“ ... 144. In conclusion on the second issue, although it is not necessary to decide the point, I see a strong case for holding that, consistently with the rule of law, binding effect cannot be given to a clause which purports wholly to exclude the supervisory jurisdiction of the High Court to review a decision of an inferior court or tribunal, whether for excess or abuse of jurisdiction, or error of law. In all cases, regardless of the words used, it should remain ultimately a matter for the court to determine the extent to which such a clause should be upheld, having regard to its purpose and statutory context, and the nature and importance of the legal issue in question; and to determine the level of scrutiny required by the rule of law.”

In our jurisdiction there are two decisions of the Supreme Court of Pakistan which have adopted the more traditional approach to determining the jurisdiction of this Court in the face of either an express bar or an implied bar. Firstly, in **Abbassia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd) through Manager and another vs. Hakeem Hafiz Muhammad Ghaus and 5 others**²⁴ a clarification was made as to how the jurisdiction of a civil court under Section 9 of the Code of Civil Procedure, 1908 would be excluded, it being held that:

²³ [2019] UKSC 22

²⁴ PLD 1997 SC 3

“ ... *It is well-settled law that where the jurisdiction of the Civil Court to examine the validity of an action or an order of executive authority or a special tribunal is challenged on the ground of ouster of jurisdiction of the Civil Court, it must be shown (a) that the authority or the tribunal was validly constituted under the Act; (b) that the order passed or the action taken by the authority or tribunal was not mala fide; (c) that the order passed or action taken was such which could be passed or taken under the law which conferred exclusive jurisdiction on the authority or tribunal, and (d) that in passing the order or taking the action, the principles of natural justice were not violated. Unless all the conditions mentioned above are satisfied, the order or action of the authority or the tribunal would not be immune from being challenged before a Civil Court. As a necessary corollary, it follows that where the authority or the tribunal acts in violation of the provisions of the statutes which conferred jurisdiction on it or the action or order is in excess or lack of jurisdiction or mala fide or passed in violation of the principles of natural justice, such an order could be challenged before the Civil Court in spite of a provision in the statute barring the jurisdiction of Civil Court.”*

As is apparent, if the authority has not been legally constituted or the authority being exercised by it and which are under challenge are “*coram non judice*” a civil courts jurisdiction to maintain a *lis* against such a cause of action would be available. Similarly, if there is an averment made in the plaint of mala fide, the Court would also retain its jurisdiction. Finally, if the authority exercised, violates the Rules of Natural Justice the *lis* would also be maintainable under Section 9 of the Code of Civil Procedure, 1908. The second decision of the Supreme Court of Pakistan regarding the interpretation of Section 9 of the Code of Civil Procedure, 1908 is **Searle IV Solution (Pvt.) Ltd. and vs. Federation Of Pakistan and Others**²⁵ wherein while considering as to what would constitute “mala fide” it was held that”

“ ... *Although the appellants have also relied on the exception where an action/order is tainted with mala fide, no proof or tangible argument in this regard has been raised besides blowing smoke of the allegedly prevalent corruption in the Customs Department. Therefore we conclusively hold that the appellants do not fall within the ambit of the exceptions carved out by the judgments of this court with respect to a bar to the jurisdiction of civil courts.”*

It is therefore clear that where the Plaintiffs pleadings of mala fide are vague then the Courts jurisdiction under section 9 of the Code of Civil Procedure, 1908 cannot be sustained so as to bring the cause before the Court. To do so, the Plaintiff would be responsible not to make just a bare allegation against the authority of mala fide but rather to expressly make a tangible argument supported by proof.

(ii) Ouster of Jurisdiction under the Act, 1925 and the Act, 2020

42. The provisions of Section 70 and 70 A of the Act, 1925 each contain an “ouster clause” which read as hereinunder:

“ ... 70. *Notice necessary in suits.*

No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the

²⁵ 2018 SCMR 1444

plaintiff and the relief which he claims; and the plaintiff shall contain a statement that such notice has been so delivered or left.

70-A. Bar of Jurisdiction

(1) Notwithstanding anything provided in any other law for the time being in force, but save as expressly provided in this Act---

(a) no Court or other authority whatsoever shall have jurisdiction to entertain, or to adjudicate upon, any matter which the provincial Government, the Registrar or his nominee, any arbitrator or liquidator a society, a financing bank, a Co-operative Bank or any other person is empowered by or under this Act, or the rules or bye-laws framed there under dispose of or to determine,

(b) the validity of anything done or order passed by the Provincial Government, Society, a financing bank, a Co-operative bank, the Registrar or any other person referred to in clause (a), under this Act or the rules and bye-laws framed thereunder, shall not be called in question in any manner whatever before or by any Court or other authority whatsoever; and

(c) no Court or other authority whatsoever shall be competent to grant any injunction or pass any other order in relation to any proceedings under this Act or any rules or bye-laws framed thereunder before the Provincial Government, a Society, a Financial Bank, a Co-operative Bank, the Registrar or any other person referred to in clause (a).

(2) The provisions of sub-section (1) shall be applicable to proceedings, appeals and revisions pending adjudication or disposal before or in any Court or other authority whatsoever on the date that the Co-operative Societies (Amendment) Ordinance, 1966, comes into force, and any order passed in such proceedings, whether before or after the coming into force, and any order passed such proceedings, whether before or after the coming into force of the said Ordinance, in regard to matters referred to in sub-section (i), shall stand vacated and be without any force.

Section 70 A had been read in conjunction with Section 54 of the Act, 1925 and which reads as hereinafter:

" ... 54. If any dispute touching the business of a society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises---

(a) between members or past members of the society or persons claiming through a member or past member, or

(b) between members or past members or persons so claiming and any past or present officer, agent or servant of the society, or

(c) between the society or its committee, and any past or present member of the society, or

(d) between the society or its committee and any past or present officer, agent or servant of the society, or a surety of such officer, agent or servant, whether such surety is or is not a member of the society, ⁵or.

(e) between a financing bank authorised under sub-section (1) of section 34 and a person who is not a member of a society

it shall be referred to the Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned.

A dispute shall include the question whether a person is or was a member of a society and also] claims by a society for debts or demands due to it from a member,

past member or non-member or the heirs or assets of a past member or non-member whether such debts or demands be admitted or not.

A dispute shall include the question whether a person is or was a member of a society and also] claims by a society for debts or demands due to it from a member, past member or non-member or the heirs or assets of a past member 4[or non-member whether such debts or debts or demand be admitted or not.

Provided that if the question at issue between a society and a claimant, or between different claimants, is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society. If no such suit is instituted within six months of the Registrar's order suspending proceedings the Registrar shall take action as laid down in paragraph I of this section.

43. Three much interpreted provisions, it had been held that under Section 70 of the Act, 1925 a notice must be issued to the Cooperative Society before instituting any *lis* regarding a matter that touched “the business of the Society” and the failure to issue to such a notice or where a suit was maintained before the time prescribed in that Section had lapsed, would render a suit as not being maintainable before this Court and liable to being rejected.²⁶

44. In **Mst. Atia Khanum vs. Messrs Saadabad Cooperative Housing Society Ltd. and others**²⁷ an interpretation was made of each of these provisions and wherein after quoting the above referred sections it was considered that:

“ ... Keeping the above principle in view, now I proceed to examine the effect of provisions contained in sections 54, 70 and 70-A of the Cooperative Societies Act, 1925. A perusal of section 54 shows that if any dispute arises, touching the business of a Society between persons enumerated in section 54 it shall be referred to the Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration. It is clarified in the section itself that the dispute shall include claim by a Society for debts or demands due to it from a member, past member or non-member or the heirs of assets of a past member or non-member whether such debts or demands be admitted or not. Proviso to section 54 contains that if the question at issue between 'a Society and a claimant or between claimants is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the Society. It is further

²⁶ See **Muhammad Ali Memorial Cooperative Housing Society Ltd. Karachi vs. Syed Sibtey Hasan Kazmi** PLD 1975 Kar 428; **Muzzafar Hussain and another vs. Yousuf and 4 others** PLD 1976 Kar 1107, **J.J. Miranda vs. Fishermans Cooperative Society Ltd, Karachi and Anothers** PLD 1978 Karachi 990 **Farida v. Prince Apartment Cooperative Housing Society Limited and 2 others** 1984 CLC 2914; **Syed Akhtar Ali v. Hoor Bai and others** 1987 MLD 2999; **Nizar Ali vs. Noorabad Cooperative Housing Society Ltd. and others** PLD 1987 Karachi 676; **Pakistan Railways through Divisional Superintendent vs. Karachi Deveopment Authority and 5 others** PLD 1992 Karachi 71; **Darul Aman Cooperative Housing Society Limited, Karachi vs. The Secretary Government of Pakistan, Ministry of Works and Rehabilitation Division and 3 others** 1995 MLD 1553; **Zia Rehman Alvi v. Messrs Allahabad Cooperative Housing Society Limited and 2. others** PLD 1995 Kar. 399; **Metro Cooperative Housing Society Limited v. Bonanza Garments industries (Pvt.) Limited and 3 others** 1996 MLD 593; **Mst. Naila Masood and 2 others vs. The Secretary Food and Cooperation, Government of Sindh** 1998 CLC 1532; **Mst. Qadri Befum vs. Province of Sindh** 1999 CLC 2023; **M. Wahidullah Ansari through his Legal Heirs and 9 others vs. Zubeda Sharif and another** 1999 YLR 1127; **Haji Shafi Muhamamd Jamoite vs. Fishermans Cooperative Society Limited and 6 others** 1999 MLD 1668; **Messrs Super Builders vs. Gulshan e Faisal Cooperative Housing Society and others** 2000 YLR 1385; **Punjab Teachers Housing Cooperative Society Limited vs. Sultan Ali and others** 2000 CLC 517; **Shaikh Abdul Lari vs. P.I.B. Cooperative Housing Society and 2 others** 2002 MLD 891; **Mst. Atia Khanum vs. Messrs Saadabad Cooperative Housing Society Ltd and others** 2002 MLD 209; **Dhunjishah B. Ghadialy and others vs. Karachi Parsi Cooeprative Housing Society Ltd. and others** 2004 CLC 587; and **Mst. Nishat Ishaq vs. Amjad Khan and 2 others** 2014 CLC 71

²⁷ 2002 MLD 209

provided that if no such suit is instituted within six months of the Registrar's order suspending proceedings the Registrar shall take action as laid down in paragraph 1 of section 54.

Now coming to sections 70 and 70-A, it is evident that under section 70, no suit shall be instituted against a Society any of its officers in respect of any act touching the business of the Society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, description and place of residence of the plaintiff and the relief which he claims: and thereafter when the suit is filed the plaint shall contain a statement that such notice has been so delivered or left. Section 70 is a part of statute since its very inception but subsequently the legislature has further deemed it necessary to restrict the jurisdiction of Civil Court and to strengthen the scheme contained in section 54 pertaining to the reference of dispute touching the business of Society as envisaged under section 54 to the Registrar, his nominee or arbitrators. Section 70-A starts with non-obstinate clause, which always has the effect of overriding the provisions contained in the statute or in any other law as the case may be. The legislature by inserting the non-obstante clause in section 70-A has further provided that no Court of or other authority whatsoever shall have jurisdiction to entertain, or to adjudicate upon any matter which the Provincial Government, the Registrar or his nominee, any arbitrator or liquidator, a Society, a financing bank, a Cooperative Bank or any other person is empowered by or under the Cooperative Societies Act, 1925 or the rules or bye-laws framed thereunder to dispose of or to determine save as expressly provided in the Cooperative Societies Act, 1925. (Emphasis laid by me). It means that the suit envisaged under section 70 shall be filed in accordance with the provisions express provided in the Cooperative Societies Act, 1925 and not otherwise if the subject-matter of the suit is within jurisdiction of the authorities mentioned in clause (a) of section 70-A (1). The intention of the legislature to oust jurisdiction of Civil Court from entertaining any suit or making any order is crystallized from the provisions contained in subsection (2) of section 70-A which provides that the provisions of subsection (1) shall apply to such matters as which stand disposed of by the Court of original jurisdiction and are pending in appeals and revision and that or made in regard to the matters referred to in subsection (1) of section 70-A, shall stand vacated and be without any force."

As can be seen, Section 70 A of the Act, 1925 prescribes that where a cause of action comes within the purview of Clauses (a) to (c) of Sub-Section (1) of Section 70A of the Act, 1925, the Registrar having been conferred powers under Section 54 of the Act, 1925 to arbitrate on such disputes, the jurisdiction of this Court would be ousted²⁸ and conversely where the matter fell outside the purview of Section 70A of Clauses (a) to (c) of Sub-Section (1) of Section 70 of the Act, 1925 then the suit would be triable under Section 9 of the Code of Civil Procedure, 1908.²⁹

²⁸ See ***J.J.Miranda vs. Fishermans Cooperative Society Ltd, Karachi and Anothers*** PLD 1978 Karachi 990; ***Sajjad Hussain Khan and 126 others v. Muhammad Hanif Siddiqui and 3 others*** 1989 MLD 4250; ***Farida v. Prince Apartment Cooperative Housing Society Limited and 2 others*** 1984 CLC 2914; ***Metro Cooperative Housing Society Limited v. Bonanza Garments industries (Pvt.) Limited and 3 others*** 1996 MLD 593; ***Haji Shafi Muhamamd Jamaite vs. Fishermans Cooperative Society Limited and 6 others*** 1999 MLD 1668; ***Mst. Atia Khanum vs. Messrs Saadabad Cooperative Housing Society Ltd and others*** 2002 MLD 209; ***Syed Sultan Ali vs. Shahibzada Frogh Najam Najmi and 2 others*** 2003 YLR 2216; ***Mst. Aqila Begum and another vs. Pakistan Employees Cooperative Housing Society Ltd and others*** PLD 2004 Karachi 1

²⁹ See ***Government of West Pakistan and others vs. Wali Muhamamd Habib and others*** PLD 1961 SC 215; ***Siraj Farooqi vs. Pir Elahi Bux Cooperative Housing Society Ltd. and others*** PLD 1956 Sind 95; ***Azizuddin Ahmed vs. Aziz Ahmed and others*** PLD 1959 Karachi 497; ***Syed Khadim Ali Shah vs. S.M. Zia and 2 others*** PLD 1981 Karachi 604; ***Muhammad Azim vs. Pakistan Employees Cooperative Housing Society Ltd. Karachi and 4 others*** PLD 1985 Karachi 481; ***Tamizul Hassan vs. Waheed Akhtar and 7 Others*** 2001 YLR 882; ***Amir Ali Hussain Shalwani vs. Ismaili Masalwala and others*** 2001 YLR 2537; ***Mst. Atia Khanum vs. Messrs Saadabad Cooperative Housing Society Ltd and others*** 2002 MLD 209; ***Gulshan e Faisal Cooperative Housing Society Limited vs. Muahmamd Arif and others*** 2003 CLC 224; ***Karachi Parsi Cooperative Housing Society Ltd. vs Mrs. Dina S. Hazari and others*** 2004 YLR 2071;; ***M. Wahidullah Ansari through Legal Heirs vs. Zubeda Sharif and another*** PLD 2002 Karachi 414; ***Attaullah and 6 others vs. Sanaullah and 5 others*** PLD 2009 Karachi 38;

(iii) Application of the Case Law that has developed under Sections 70 and 70 A of the Act, 1925 to the Act, 2020

45. Mr. Raza has contended that Section 36, Section 70, Sub-Section (1) of Section 104 and Section 116 of the Act, 2020 are ouster clauses. While I agree with him that the abovementioned clauses are ouster clauses, I would consider that Section 107 and Section 115 of the Act, 2020 also operate as ouster clauses. Each of these sections of the Act, 2020 are reproduced as hereinunder:

“ ... 36. *Shares of interest not liable to attachment*

Subject to the provisions of section 35, the share or interest of a member in the capital of a society or in any provident fund established under section 53 shall not be liable to attachment or sale under any decree or order of a Court of justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Insolvency Karachi Division Act, 1909 nor a receiver under the Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest. ...

70. *Bar of Suit in Winding up and dissolution matters*

Save in so far as is expressly provided in this Act, no civil court shall take cognizance of any matter arising out of any proceedings under Chapter X or connected with the winding up or dissolution of a society under this Act and when a winding up order has been made, no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose. ...

104. *Cognizance of Offences*

(1) No Court other than the Special Court for Cooperative Societies established under section 121 shall try offences under this Chapter and disputes referred to in section 78. ...

107. *Finality of Orders of Government*

An order passed in appeal under 109 or in revision under section 110 by Government shall be final and conclusive and shall not be liable to be called in question in any court ...

115. *Notice Necessary in Suits*

No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months' notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

116. *Bar of Jurisdiction*

(1) Notwithstanding anything provided in any other law for the time being in force, but save as expressly provided in this Act –

(a) no Court or other authority whatsoever shall have jurisdiction to entertain, or to adjudicate upon, any matter which Government, the Registrar, officer or liquidator, a society, a financing bank, a Cooperative bank or any other officer or person is empowered by or under this Act, or the rules or by-laws framed there under, to dispose of or to determine;

(b) the validity of anything done or an order passed by Government, a society, a financing bank, a Co-operative bank, the Registrar or any other person referred to in clause (a), under this Act or the rules and bylaws

framed there under, shall not be called in question in any manner whatever before or by any Court or other authority whatsoever; and

(c) no Court or other authority whatsoever shall be competent to grant any injunction or pass any other order in relation to any proceedings under this Act or any rules or by-laws framed there under before Government, a society, a financing bank, a Co-operative bank, the Registrar or any other person referred to in clause (a).

(2) The provisions of sub-section (1) shall be applicable to proceedings, appeals and revisions pending adjudication or disposal before or in any Court or other authority whatsoever on the date this Act, comes into force, and any order passed in such proceedings, whether before or after the coming into force of this Act, in regard to matters referred to in sub-section (1), shall stand vacated and be without any force."

46. Considering the impact of each of these clauses, Section 36 of the Act, 2020 restrains a "Court of Justice"³⁰ from attaching or selling under any decree a "share or interest of a member in the capital of a society or in any provident fund established under section 53." Section 70 of the Act, 2020 excludes the jurisdiction of the "Civil Court" from taking cognizance of any matter under Chapter X of the Act, 2020 i.e. offences and also from taking cognizance of any matter connected with the winding up or dissolution of a society. I have already considered the application of Sub-Section (1) of Section 104 of the Act, 2020 hereinabove³¹ and would add to that by stating that there seems to be overlap as between Section 70 of the Act, 2020 and Sub-Section (1) of Section 104 of the Act, 2020 as they both seem to oust the jurisdiction of any court in respect of matters pertaining to offences as contained in Chapter X of the Act, 2020. Section 107 of the Act, 2020 purports to oust the jurisdiction of the Court from reviewing a decision of the Government of Sindh on an appeal under Section 109 of the Act, 2020 or from a reviewing a decision of the Government of Sindh or the Registrar on a revision under section 110 of the Act, 2020 and which are further typographical errors made by the statutory draftsman and should be read as referring to Sections 105 and 106 of the Act, 2020 respectively.

47. Regarding Sections 115 and Sections 116 of the Act, 2020, it is interesting to note that while the provisions of Section 70 and 70A of the Act, 1925 have been replicated in Sections 115 and Sections 116 of the Act, 2020, no provisions paralleling with Section 54 of the Act, 1925 has been adopted in the Act, 2020. As such *inter alia* the provisions of disputes as between members, past members and the Society inter se are no longer referable to arbitration and hence such disputes will not be impacted by the provisions of Sub-Section (1) of Section 116 of the Act, 2020.

³⁰ See Paragraph 29 hereinabove where it has been considered that this expression must be considered as a reference to a Civil Court having jurisdiction under Section 9 of the Code of Civil Procedure, 1908

³¹ See Paragraph 26 and 27 hereinabove

48. By contrast, the caselaw that had developed under Section 70 of the Act, 1925 should logically continue to be relevant when interpreting Section 115 of the Act, 2020. I have perused that case law and in which it has clearly been held that the service of a notice is mandatory prior to institution of a suit. However, I note that none of the decisions that are reported take into account the manner in which “ouster clauses” are to be interpreted in terms of the decisions of the Supreme Court of Pakistan reported as **Abbassia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd) through Manager and another vs. Hakeem Hafiz Muhammad Ghaus and 5 others**³² and **Searle IV Solution (Pvt.) Ltd. and vs. Federation Of Pakistan and Others**.³³ To my mind aside from seeing as to whether the impugned decision or action “touched the business” of the Cooperative Society, prior to rejecting a plaint, it would also be imperative when considering the maintainability of any suit under Section 115 of the Act, 2020 to see as to whether or not:

- (i) the authority or the tribunal whose action or decision is being impugned was not legally exercised under the Act;
- (ii) the action or decision passed by the authority or tribunal was mala fide;
- (iii) the order passed or action taken was such which could not have been passed or taken under the law which conferred exclusive jurisdiction on the authority or tribunal, and
- (iv) in passing the order or taking the action, the principles of natural justice were violated.

It would not be out of place to mention that these principles have also been held in decisions of this court when interpreting provisions which are analogous to the provisions of Section 115 of the Act, 2020 such as Section 20 A of the Sindh Building Control Ordinance, 1979,³⁴ Article 131 of the Karachi Development Authority Order, 1957³⁵ and Section 87 of the Karachi Port Trusts Act, 1886³⁶ and which I think are correct.

³² PLD 1997 SC 3

³³ 2018 SCMR 1444

³⁴ See **Noor Muhammad and another vs. Building Control Authority** 1992 CLC 729; **Messrs Falaknaz Builders vs. Karachi Building Control Authority** 2001 YLR 2542; **Messrs Bambino (Pvt.) Ltd through Director vs. Government of Sindh through Chief Secretary and another** 2002 MLD 1673;

³⁵ See **Munawar & Co (Pvt.) Ltd. vs. Karachi Development Authority** 1998 MLD 1771; **Marriage Halls Association vs. Karachi Building Control Authority** 1999 YLR 2317;

³⁶ See **Haji Abdul Aziz vs. Karachi Port Trust** 2010 MLD 1916;

E. The Disputes involved in the Suits

49. To summarise, when one examines the jurisdiction of this Court to try a suit relating to issues pertaining to Cooperative Societies, a Court will have to:

- (i) First examine as to whether the dispute pleaded relates to the trial of an offence or is a dispute relating to rights and obligations regulated by the Act, 2020 and where, in either case under Section 117 and Section 73 of the Act, 2020 respectively, the *lis* will mandatorily have to be tried or adjudicated by the “Special Court for Cooperative Societies”, while all other disputes would be within the purview of a Civil Court or Criminal Court of competent jurisdiction to try;
- (ii) if this Court has jurisdiction to adjudicate on a civil dispute pertaining to a Cooperative Society in terms of clause (i) hereinabove and the matter in dispute is maintained “against a society or any of its officers” and is an issue “touching the business” of a Cooperative Society, then it will, subject to clauses (iii) to (v) hereinbelow, be mandatory for a notice under Section 115 of the Act, 2020 to be issued by the Plaintiff in the manner prescribed in that Section and which suit can only be maintained after the time period prescribed in that section i.e. two months has expired and within which Plaintiff a statement confirming that such notice has been delivered or left must be pleaded;
- (iii) the provisions of clause (ii) hereinabove will not apply where the suit is not one which is maintained against either a society or any of its officers;”
- (iv) the provisions of clause (ii) hereinabove will also not apply where the suit is not one which is maintained on an issue which is not “touching the business” of a Cooperative Society;
- (v) finally, the provisions of clause (ii) hereinabove will also not apply where, as per the decisions of the Supreme Court of Pakistan reported as **Abbassia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd) through Manager and another vs. Hakeem Hafiz Muhammad Ghaus and 5 others**³⁷ and **Searle IV**

³⁷ PLD 1997 SC 3

Solution (Pvt.) Ltd. and vs. Federation Of Pakistan and Others,³⁸in the Plaint it is alleged that either:

- (a) the action or decision made by the Cooperative Society or its officers which is impugned was not legally exercised under the Act, 2020;
- (b) the action or decision attributed to the Cooperative Society or its officers, was mala fide, provided that the mala fide is expressly pleaded and supported by a tangible argument with proof;
- (c) the order passed or action taken by the Cooperative Society or its officers was such which could not have been passed or taken under the Act, 2020; **or**
- (d) in passing the order or taking the action the Cooperative Society or its officers violated the principles of natural justice.

50. As each of the suits clearly do not relate to any offence mentioned in Section 99 of the Act, 2020, I am therefore left to examine as to whether each of the suits pertain to a civil dispute involving a matter that arises from the rights and obligations that are regulated by the Act, 2020, which by virtue of Section 73 of the Act, 2020 will be triable by the “Special Court for Cooperative Societies.” In addition, in the event that the suit is maintained as against a “Cooperative Society or its Officers” and which involves an impugned action or decision which “touched the business of the Cooperative Society, then it would also be incumbent to see as to whether the requirements of Section 115 of the Act, 2020, subject to the decisions of the Supreme Court of Pakistan in **Abbassia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd) through Manager and another vs. Hakeem Hafiz Muhammad Ghaus and 5 others**³⁹ and **Searle IV Solution (Pvt.) Ltd. and vs. Federation Of Pakistan and Others**,⁴⁰ have been complied with prior to maintaining the *lis*.

51. **Suit No.424 of 2006:** This is a claim for damages as against Al-Habib Cooperative Housing Society contending that while an allotment was made to the Plaintiff as possession was not handed over to the Plaintiff of the property, they are entitled to damages. While it is admitted that an allotment is made by a Cooperative Society and which was not honoured by that Society, I have perused

³⁸ 2018 SCMR 1444

³⁹ PLD 1997 SC 3

⁴⁰ 2018 SCMR 1444

the provisions of the Act, 2020 and while Section 32 prescribes the manner in which an allotment of a plot can occur in a Cooperative Society, it does not create or determine any rights or obligations as between the Society and the allottee once the allotment has been made. This it seems would be regulated by the provisions of the Transfer of Property Act, 1882 and the Contract Act, 1872. Having come to the conclusion that the dispute does not in any manner concern any obligation or right emanating from the Act, 2020 I am clear that the dispute as between the Plaintiff and the Cooperative Society in this Suit does not fall within the jurisdiction of the “Special Court for Cooperative Societies” and will therefore be an action maintainable before this Court under Section 9 of the Code of Civil Procedure, 1908.

52. While on the basis of the observations made hereinabove, I could also unilaterally determine as to whether a Notice was required to be served on Al-Habib Cooperative Housing Society under the provisions of Section 70 of the Act, 1925 prior to instituting the Suit and hence determine CMA No. 13832 of 2020, as I have not heard arguments on this application, I would think it proper that the application should be decided after hearing both the parties. The application therefore will remain pending before this Court for adjudication.

53. **Suit No.1491 of 2015 and Suit No. -1133 of 2021:** These two suits relate to the ownership of Plot No. A-57, Allahabad Cooperative Housing Society Limited, Block-13, KDA Scheme No.24, Gulshan-e-Iqbal, Karachi, admeasuring 200 square yards located in Allahabad Cooperative Housing Society Limited which is disputed as between two private persons and which rights are to be determined on the basis of Sale Agreement and Sale Deeds as entered into between them. In an unreported Judgment passed in H.C.A. No. 140 of 1997 entitled **Hussain Ali J. Merchant vs. Ismailia Garden Cooperative Housing Society Limited & another**, a Division Bench of this Court has held as hereinunder:

“ ... *It is true that the transfer of the plot by the Society would normally form part of its business, but in the present case there is no dispute that initially the appellant had himself transferred the shares in the name of the respondent No.2 and therefore setting on such direction the Society perhaps affected the transfer in its records. If, however, now the appellant is claiming the earlier transfer by him as being by way of a benami transaction and without consideration or is accusing the second respondent of tempering with the documents, all these would form part of dispute between the appellant and the second respondent and could by no means be considered as touching the business of the respondent Society. **Basically the dispute involved in the suit is between the appellant and the respondent No.2 and pertains to the determination of their respective title, in the said property and is therefore quite independent of the Society's business. Transfer of the shares and the property in the records of the Society are merely incidental to the acts of the appellant and the respondent No.1, the Society itself having no particular interest in such transfer. In these circumstances, we are of the view that the provision of section 70 of the said Act would not be attracted in the case. But even if the said section were to apply, then too, at best, the plaint could be rejected to the extent of the respondent No.1 Society alone and not in so far as the respondent No.2 was concerned against whom the suit could continue. However,***

having already held that the said section 70 is not applicable to the present case, we allow this appeal, set aside the impugned order and direct restoration of the plaint."

Aside from being binding on this Court, while agreeing with the finding in this judgement, I would only add that the rights and obligations that are in dispute in this Suit are rights and obligations to be determined under the provisions of the Transfer of Property Act, 1882 and the Contract Act, 1872 and which are hence not within the jurisdiction of the "Special Court for Cooperative Societies" and which will render this *lis* as being maintainable before this Court under Section 9 of the Code of Civil Procedure, 1908. In addition, the *lis* having not been maintained as against the Cooperative Society and whose presence in the *lis* is merely incidental to the main dispute, as clarified by the Division Bench of this Court, I am of the opinion that the dispute in each of the suits is not one which touches the business of the Cooperative Society and hence a Suit under Section 70 of the Act, 1925 or under Section 115 of the Act, 2022 was not required to be served on the Cooperative Society in Suit No.1491 of 2015 and Suit No. -1133 of 2021 respectively

54. In terms of the Office Objections raised at Serial No. 1 and Serial No. 2 of Suit No. -1133 of 2021, the delay in the time for compliance is condoned and the Office Objections are to held as complied with. The Office is directed to affix a number to the Suit.

55. **Suit No.197 of 2022 and Suit No.604 of 2022:** Suit No. 197 of 2022 has been maintained by Bangalore Cooperative Housing Society Limited seeking a declaration that it has validly cancelled the allotment of a property that had made to one of its members. The allottee has countered this by maintaining Suit No. 604 of 2022 contending that the allotment is intact as it has been illegally cancelled. I have perused the Act, 2020 and am of the opinion that while the conditions regulation the manner in which a property owned by a Cooperative Society is to be allotted is regulated by Section 32 of the Act, 2020, the manner in which such a property once allotted can be cancelled is not a right or obligation regulated by the Act, 2020 and which to my mind would be regulated by either the Bye-Laws of the Cooperative Society and by the provisions of the Transfer of Property Act, 1882 and the Contract Act, 1872. The rights and obligations that are to be determined in these two Suits are hence not within the jurisdiction of the "Special Court for Cooperative Societies" and will therefore both of these suits are maintainable before this Court under Section 9 of the Code of Civil Procedure, 1908.

56. The allotment of a plot and the subsequent cancellation of a plot by a Cooperative Society, and more particularly a Cooperative Housing Society, would to my mind be an act touching the business of a Society and hence require a notice

to be issued to the Society, now in terms of Section 115 of the Act, 2020 prior to a suit being maintained. Interestingly, in the dispute before the Court, Banglore Cooperative Housing Society Limited has not waited for such a notice to be served on it and has instead cancelled the allotment and thereafter preemptively maintained Suit No.197 of 2022 prior to any action being taken by the allottee Mr. Qaiser Ahmed to impugn such a cancellation.

57. Mr. Qaiser Ahmed has subsequently maintained Suit No.604 of 2022 impugning such a cancellation alleging malice on the part of Banglore Cooperative Housing Society Limited in Paragraph 18 of the Plaint and has also contended in Paragraphs 14, 15 and 17 of the Plaint that the basis for the cancellation of the allotment i.e. the failure to pay non utilisation fee is in excess of the jurisdiction of Banglore Cooperative Housing Society Limited and which would to my mind on the basis of the decisions of the Supreme Court of Pakistan reported as **Abbassia Cooperative Bank (Now Pubjab Provincial Cooperative Bank Ltd) through Manager and another vs. Hakeem Hafiz Muhammad Ghaus and 5 others**⁴¹ and **Searle IV Solution (Pvt.) Ltd. and vs. Federation Of Pakistan and Others**,⁴² negate the application of Section 115 of the Act, 2020 to that *lis* rendering it to be maintainable before this Court and not liable to being rejected.

58. Going forward, the Office is directed to ensure that Suit No.424 of 2006 is separated from the other Suits and listed separately; while the connected suits i.e. Suit No.1491 of 2015 and Suit No. -1133 of 2021 should be listed together and Suit No 197 of 2022 and Suit No. 604 of 2022 should be listed together. Order accordingly

J U D G E

Karachi 2 November 2024

⁴¹ PLD 1997 SC 3

⁴² 2018 SCMR 1444

